

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
AUGUST 10, 2006**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on August 10, 2006, beginning at 10:15 a.m. The meeting was tape-recorded and the tape(s) are on file at the ABC Commission in the Legal Division.

**ROLL CALL**

Chairman Douglas A. Fox, Commissioner Mike Joyner and Commissioner John Lyon were present at the meeting.

**MINUTES OF JULY 13, 2006 MEETING**

Chairman Fox made a motion to waive the reading of the minutes from the July 13, 2006, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the July 13, 2006, meeting. Seconded by Commissioner Lyon. So Ordered.

**EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST**

As required by Executive Order Number One, Chairman Fox asked Commissioner Lyon and Commissioner Joyner if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Lyon recused himself from First Offense Case #6, Jason's Deli Durham. Commissioner Joyner stated that he found no conflicts of interest. Chairman Fox recused himself from ruling on the following cases:

Hearing Case #19 – On the Border Mexican Grill and Cantina  
Hearing Case #27 – Coastal Beverage Company  
Hearing Case #66 – Eckerd Drugs 2430  
Hearing Case #67 – Scotchman 262

Administrator Michael Herring presented Service Awards to the following ABC Commission employees:

Sally Blackmon – 5 Years  
Tiffany Goodson – 5 Years  
LoRita Pinnix – 10 Years  
Tami Clifton – 20 Years

**I. HEARING CASES – 74 Listed**

Chief Counsel Fred A. Gregory stated that Mr. Dennis Guthrie, attorney for the petitioner in contested case #1, Hooters, was present to speak on behalf of his client. Assistant Counsel LoRita Pinnix represented the Commission.

Ms. LoRita Pinnix briefly summarized the facts in the case. The original violation was a charge of sale to an underage person. During the course of the hearing it was found the underage person did not pay for the alcoholic beverages and Administrative Law Judge Chess allowed the Commission's motion to conform the pleadings to the evidence in the case. Judge Chess found there was a violation and he recommended a 15-day active suspension of ABC permits and a \$500.00 fine.

Mr. Guthrie stated he submitted exceptions to the recommended decision. Mr. Guthrie stated there was no sale of malt beverages to the underage person and based upon the young man's inconsistencies in his

testimony his creditability should be in doubt. Mr. Guthrie stated Chief Guge interviewed the waitress and she said she had sold the pitcher of beer to the three older patrons and she had checked their identifications.

Chairman Fox stated he had a problem with the waitress's testimony about Greg (the oldest person in the group). Chairman Fox stated the waitress said Greg came in all the time to Hooters almost every time she worked and they spoke to each other because they were friends. Chairman Fox questioned if Greg was getting a pitcher of beer free when he came in. Commissioner Joyner had extensive questioning about the underage witness being subpoenaed.

Ms. Pinnix stated that Judge Chess observed the witnesses in this case and made a judgment about their demeanor and truthfulness. Ms. Pinnix said that Judge Chess determined that there was a violation and he allowed the motion to amend the pleadings that the waitress did give the beer to the underage person. Ms. Pinnix stated that 150B of the General Statute states that if the Commission changes their decision or goes against the finding of the Administrative Law Judge that the Commission should put in their decision the specific reasons for going against the Administrative Law Judge.

Commissioner Joyner made a motion to dismiss the charge against the permittee. Chairman Fox made a motion to leave the decision of Judge Chess as it was. Commissioner Lyon was undecided and wanted to get further explanation. Chairman Fox made a motion to continue. Seconded by Commissioner Lyon. So Ordered. This case will be continued at the October Commission Meeting.

Mr. Gregory stated that Mr. Joe Hester, attorney for hearing case #74- Hunter Hill Pub, was present to speak on behalf of his client. Mr. Hester stated that an underage person consumed alcohol at Hunter Hill Pub and at a residence. The underage consumer was driving down Highway 301 and ran over a bicycle with two people in his lane. Mr. Hester stated that Keith Warner, Senior District Attorney in Nash County, explained that Mr. Putnam could not have avoided them under any set of circumstances. Mr. Hester stated that the bicycle had no reflectors and the riders wore dark clothes. Mr. Hester stated the bicycle riders had an alcohol content of .20 and .21 at the time of the accident and controlled substances in their systems. Mr. Hester said there was another vehicle beside Mr. Putnam and that individual told the officer the people could not be seen.

Mr. Hester stated that the charge against Hunter Hill Pub is pending in the Nash County District Court. Mr. Hester stated that Lance Proctor has been the owner of Hunter Hill Pub for five years and this is the only violation he has had.

Chairman Fox made a motion to accept the Offer In Compromise with the stipulation that all the employees attend a RASP class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Mr. Andrew Parker, attorney for hearing case #72, Applebee's, was present to speak on behalf of his client. Mr. Parker stated this is the first violation for Applebee's on Tunnel Road in Asheville. Mr. Parker stated four people were at the table in question, two were over 21 and two were underage. Mr. Parker said the server did not card them and three girls left Applebee's and went to a friend's house. Mr. Parker stated they left the house and one of the underage girls was driving, wrecked the car and one girl was killed. Mr. Parker said marijuana was found on the driver at the scene and her alcohol content was .04. Mr. Parker stated the driver pleaded guilty to involuntary manslaughter. Mr. Parker stated the server was fired immediately. Mr. Parker stated it was his understanding that Applebee's had contacted ALE to schedule a RASP class. Mr. Parker asked the Commission to reduce the penalty.

Chairman Fox made a motion to accept the Offer in Compromise as in the stipulation and that all employees attend a RASP class within the next 30 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Gregory stated that Mr. Bart White, attorney for hearing case #73, Han Dee Hugos 21, is out of town and that case should be continued to the September Commission Meeting.

Commissioner Joyner made a motion to approve the remaining Offers in Compromise. Seconded by Commissioner Lyon. So Ordered.

## **II. FIRST OFFENSE CASES – 41 Listed**

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on August 10, 2006, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Wilco 1892 – 1760 US Hwy 5, Aberdeen, NC 28315
2. Woodleaf Lanes – 1811 Jake Alexander Boulevard
3. Siena Hotel – 1505 East Franklin Street, Chapel Hill, NC 27514
4. Dean and Deluca – 6903 Phillips Place Court, Charlotte, NC 28210
5. Quick Trip 4 – 662 Haywood Road, Asheville, NC 28806
6. Jasons Deli Durham – 5408 New Hope Commons Suite 123A, Durham, NC 27707
7. Harpers Restaurant – 301 East Woodlawn Road, Charlotte, NC 28217
8. Fosters Grocery – 931 West Harrison Street, Reidsville, NC 27320
9. Emporium on Main – 106 North Main Street, Belmont, NC 28012
10. Exprezit Convenience Store 823 – 4325 Old Rural Hall Road, Winston Salem, NC 27105
11. Chilis Grill and Bar – 5521 West Park Drive, Charlotte, NC 28210
12. Eckerd Drugs 8156 – 501 Olde Waterford Way, Leland, NC 28451
13. China King Super Buffet – 1112 Eastchester Drive, High Point, NC 27265
14. Beef O'Brady's Family Sports Pub – 1423 29<sup>th</sup> Avenue Drive NE, Hickory, NC 28601
15. Xpress Mart 39 – 6401 Old Statesville Road, Charlotte, NC 28269
16. T Mart – 204 West College Street, Warsaw, NC 28398
17. Quality Food Mart of Fuquay Varina – 1325 Broad Street, Fuquay Varina, NC 27526
18. Majettes Grocery – Corner NC 46 and US 301, Garysburg, NC 27831
19. Mellow Mushroom – 410 Blackwell Street, Durham, NC 27710
20. Lowes Foods 153 – 1 Sandy Ridge Square Shopping Center, Hickory, NC 28601
21. Dean and Deluca Wine Room – 6822-G Phillips Place Court, Charlotte, NC 28210
22. Boulevard Kwik Pik – 1100 North Main Street, Roxboro, NC 27573
23. Arnolds Convenience Mart – 5960 Hwy 561, Louisburg, NC 27549
24. Wal Mart Supercenter 948 – 2525 Hwy 70 South East, Hickory, NC 28602
25. Handy Mart 62 – 3657 Wilson Mills Road, Wilson Mills, NC 27577
26. Pinnacle Pantry – 2806 North Old Hwy 52, Pinnacle, NC 27043
27. Petro Express 28 – 4718 North Graham Street, Charlotte, NC 28269
28. Petro Express 18 – 2701 Graham Street, Charlotte, NC 27269
29. Morrisville Pkwy Amoco Food Shop – 9825-A Chapel Hill Road, Morrisville, NC 27560
30. On The Go Mart – 7051 South Boulevard, Charlotte, NC 28210
31. Fast Track 138 – 2455 Hwy 70 SE, Hickory, NC 28602
32. Esha Food Mart – 1029 South Lafayette Street, Shelby, NC 28150
33. Eagle Food Mart 5 – 347 South Bickett Boulevard, Louisburg, NC 27549
34. Daniels Thrifty Mart – 813 Madison Street, Reidsville, NC 27320
35. Xtra Mile Food Market – 450 East King Street, Boone, NC 28607
36. Q Express – 525 4<sup>th</sup> Street SW, Hickory, NC 28601
37. Magnolia Greens Country Store – 1012 Grandiflora Drive, Leland, NC 28451
38. Lowell Mini Mart – 719 McAdenville Road, Lowell, NC 28098
39. Holiday Travel Mart – 217 Hwy 701 South, Four Oaks, NC 27524

40. East Shop II – 5724-A East W T Harris Boulevard, Charlotte, NC 28227
41. Mundo Latino – 2943 Industrial Drive, Sanford, NC 27332

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases. Seconded by Commissioner Joyner. So Ordered.

### **III. ABC STORE LOCATION – DARE COUNTY ABC BOARD**

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Dare County. On July 10, 2006, the Commission received a letter from Fields Scarborough, General Manager of the Dare County ABC Board, requesting approval to relocate the Manteo store. On July 18, 2006, ALE Agent J.E. Pierce began an investigation and found that the ABC Board had purchased land approximately one mile west of the present store and located at 506 US Highway 64-264 Business, Manteo, North Carolina.

The deed showed the Dare County ABC Board purchased this property on April 25, 2006.

No conflict of interest exists between the Dare County ABC Board and the property owners.

The Dare County ABC Board plans to build a new store and open it by April 1, 2007. The building will be 3,242 square feet with an unfinished second floor. The property is zoned properly.

The nearest church is Manteo Baptist Church and is .7 of a mile west from the proposed location.

The nearest school is Manteo Elementary School and is .8 of a mile west from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on July 10, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections.

Mr. Herring recommended the ABC Commission approve the store location.

Chairman Fox made a motion to approve the store location. Seconded by Commissioner Joyner. So Ordered.

### **IV. ABC STORE LOCATION – LINCOLN COUNTY ABC BOARD**

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Lincoln County. On June 23, 2006, the Commission received a letter from David Goodnight, General Manager of the Lincoln County ABC Board. On June 30, 2006, ALE Supervisor Mark Senter began an investigation and found that the Lincoln County ABC Board is planning to locate a new store at 793 North Highway 18 in Vale, North Carolina.

The property is currently owned by Bobby Gene Davis and the board plans to lease property in a section of a shopping center.

The nearest school is Banoak Elementary School and is 5.8 miles from the proposed location.

The nearest church is Laurel Hills United Methodist Church and is less than .1 mile from the proposed location.

The nearest ABC store to this proposed location is in Lincolnton and part of the Lincolnton ABC Board. The Lincolnton ABC Board has one store in the east section of Lincoln County and is proposing a store in the

western section in the town of Vale. The nearest ABC store from this proposed location would be 20 miles in either direction.

There have been some objections from the church in which members signed a petition.

Pursuant to ABC Commission Rules, Notice of Intent was posted on June 22, 2006, in compliance with the ABC Commission's 30-day requirement.

No conflict of interest exists between the Lincoln County ABC Board and the property owners.

The Commission has received one letter in which they are not objecting to this proposed location. No phone calls nor letters have been received objecting to this site.

Commissioner Joyner made a motion to approve the store location. Seconded by Commissioner Lyon. So Ordered.

#### **V. ABC STORE LOCATION – PITT COUNTY ABC BOARD**

Administrator Michael Herring stated this ABC Store location would be continued at the next Commission Meeting because the sign was not properly posted on the property nor was it the proper size.

Chairman Fox stated a letter needed to be sent to Mike Robertson, Director of ALE, regarding the ABC Store location investigations. Chairman Fox stated that the ALE Agents did a thorough investigation in a timely manner.

#### **VI. OTHER BUSINESS –**

Chairman Fox made a motion to approve the following future Commission dates: Thursday, November 9, 2006 and Thursday, December 14, 2006. Seconded by Commissioner Joyner. So Ordered.

With no further business, the meeting adjourned.

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Douglas A. Fox, Chairman  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

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Dottie L. Taylor, Legal Division